

§ 1187.79. Auditing requirements related to resident personal fund management.

(a) The Department will periodically audit residents' personal fund accounts.

(b) If discrepancies are found at audit, the nursing facility shall make restitution to the residents for funds improperly handled, accounted for or disbursed. The Department may sanction the nursing facility in accordance with Subchapter I (relating to enforcement of compliance for nursing facilities with deficiencies).

§ 1187.80. Failure to file an MA-11.

(a) Failure by the nursing facility to file a timely MA-11, other than a final MA-11 and annual MA-11s due along with a final MA-11, may result in termination of the nursing facility's provider agreement and will result in adjustment of the nursing facility's per diem rate as provided in this subsection. An MA-11 is considered timely filed if the MA-11 is received within 120 days following the June 30 or December 31 close of each fiscal year as designated by the nursing facility, or if an extension has been granted, within the additional time allowed by the extension. The Department may also seek injunctive relief to require proper filing, as the Department may deem is in the best interest of the efficient and economic administration of the MA Program.

(1) Cost report periods prior to January 1, 2001.

(i) If an MA-11 is not timely filed, the nursing facility's per diem rate will be adjusted downward by 5% beginning the first day of the next month and will remain in effect until the date that an acceptable MA-11 is filed with the Department.

(ii) If an MA-11 is timely filed and is unacceptable, the Department will return the MA-11 to the nursing facility for correction. If an acceptable MA-11 is not filed by the end of the 30th day from the date of the letter returning the unacceptable MA-11 from the Department, the nursing facility's per diem rate will be adjusted downward by 5% beginning the first day of the next month and will remain in effect until the date that an acceptable MA-11 is filed with the Department.

(2) Cost report periods beginning January 1, 2001, and thereafter.

(i) If an MA-11 is not timely filed, the net operating components of the nursing facility's per diem rate will be adjusted downward by 5% and the movable property component of the nursing facility's capital per diem rate will be reduced to zero (\$0). This per diem rate

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reduction will begin the first day of the next month and remain in effect until the date that an acceptable MA-11 is filed with the Department.

(ii) If an MA-11 is timely filed and is unacceptable, the Department will return the MA-11 to the nursing facility for correction. If an acceptable MA-11 is not filed by the end of the 30th day from the date of the letter returning the unacceptable MA-11 from the Department, the net operating components of the nursing facility's per diem rate will be adjusted downward by 5% and the movable property component of the nursing facility's capital per diem rate will be reduced to \$0. This per diem rate reduction will begin the first day of the next month and remain in effect until an acceptable MA-11 is filed with the Department.

(b) If a nursing facility fails to file a timely final MA-11 and outstanding annual MA-11s:

(1) The net operating components of the nursing facility's per diem rate will be determined on the basis of the nursing facility's peer group medians, prior to the percent of median adjustment in accordance with § 1187.96 (relating to price and rate setting computations), for the last fiscal period for which the nursing facility has an acceptable MA-11 on file.

(2) The capital component of the nursing facility's per diem rate will be set at \$0.

SUBCHAPTER G. RATE SETTING

§ 1187.91. Database.

The Department will set rates for the case-mix payment system based on the following data:

(1) *Net operating costs.*

(i) The net operating prices for year 1 of implementation will be established based on the most recent audited nursing facility cost report adjusted for inflation, for those nursing facilities receiving audit reports issued by the Department on or before March 31, 1995.

(ii) If an Intergovernmental Transfer Agreement has been executed on or before January 15, 1996, and the State Plan Amendment with sufficient funds to carry out the terms of this

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subparagraph has been approved by the Health Care Financing Administration (HCFA), the net operating prices for year 2 of implementation will be established based on the following:

(A) Audited nursing facility costs for the 2 most recent years available in the NIS database adjusted for inflation. This database includes audited MA-11 cost reports that are issued by the Department on or before March 31, 1996, of the July 1 price setting period.

(B) If a nursing facility that has participated in the MA Program for 3 or more consecutive years has fewer than two audited cost reports in the NIS database that are issued by the Department on or before March 31, 1996, of the July 1 price setting period, the Department will use reported costs, as adjusted to conform to this title, for those years not audited within 15 months of the date of acceptance, until audits have been completed and are available in the NIS database for price setting.

(C) If a nursing facility, that has not participated in the MA Program for 2 consecutive years, has fewer than two audited cost reports in the NIS database that are issued by the Department on or before March 31, 1996, of the July 1 price setting period, the Department will use all available audited cost reports in the NIS database.

(iii) If an Intergovernmental Transfer Agreement has not been executed on or before January 15, 1996, and the State Plan Amendment with sufficient funds to carry out the terms of subparagraph (ii) has not been approved by HCFA, the net operating prices in year 2 of implementation will be established based on the provisions contained in subparagraph (iv).

(iv) The net operating prices for year 3 of implementation and thereafter will be established based on the following:

(A) Audited nursing facility costs for the 3 most recent years available in the NIS database adjusted for inflation. This database includes audited MA-11 cost reports that are issued by the Department on or before March 31 of each July 1 price setting period.

(B) If a nursing facility that has participated in the MA Program for 3 or more consecutive years has fewer than three audited cost reports in the NIS database that are

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issued by the Department on or before March 31 of each July 1 price setting period, the Department will use reported costs, as adjusted to conform to Department regulations, for those years not audited within 15 months of the date of acceptance, until audits have been completed and are available in the NIS database for price setting.

(C) If a nursing facility, that has not participated in the MA Program for 3 or more consecutive years, has fewer than three audited cost reports in the NIS database that are issued by the Department on or before March 31 of each July 1 price setting period, the Department will use all available audited cost reports in the NIS database.

(D) For net operating prices effective on or after July 1, 2001, the Department will revise the audited costs specified in clauses (A) - (C) by disregarding audit adjustments disallowing or reclassifying to capital costs, the costs of minor movable property (as defined in § 1187.2, (relating to definitions), effective on July 1, 2001) or linens reported as net operating costs on cost reports for fiscal periods beginning prior to January 1, 2001. The Department will not adjust the audited statistics when revising the nursing facility audited Resident Care, Other Resident Care and Administrative allowable costs to disregard the adjustments relating to minor movable property and linen costs. After revising the audited costs to disregard these adjustments, the Department will recalculate the maximum allowable administrative cost, and will disallow administrative costs in excess of the 12% limitation as specified in § 1187.56(1)(i) (relating to selected administrative cost policies).

(v) Subparagraphs (ii)(B), (iii) and (iv)(B) do not apply, if a nursing facility is under investigation by the Office of Attorney General. In these situations, the Department will use a maximum of the three most recent available audited cost reports in the NIS database used for price setting.

(vi) A cost report for a period of less than 12 months will not be included in the NIS database used for each price setting year.

(vii) During the second calendar quarter of each year, prior to price setting, cost report information will be indexed forward to the 6th month of the 12-month period for which the prices are set. The index used is the most current HCFA Nursing Home Without Capital Market Basket Index.

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(viii) Resident data as reported on the Federally approved PA specific MDS will be used to determine case-mix adjustments for each price setting and rate setting period. The resident data requirements are specified in § 1187.33(a) (relating to resident data reporting requirements).

(2) *Capital costs.*

(i) *Fixed property component.*

The fixed property component of a nursing facility's capital rate will be based upon the fair rental value of the nursing facility's fixed property.

(ii) *Movable property component.*

(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the movable property component of a nursing facility's capital rate will be based upon the fair rental value of the nursing facility's major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the movable property component of a nursing facility's capital rate will be based upon the audited costs of the nursing facility's major movable property as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

(iii) *Real estate tax cost component.* The real estate tax component of a nursing facility's capital rate will be based upon the nursing facility's actual audited real estate tax costs as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

§ 1187.92. Resident classification system.

(a) The Department will use RUG-III to adjust payment for resident care services based on the classification of nursing facility residents into 44 groups.

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(b) Each resident shall be included in the RUG-III category with the highest numeric CMI for which the resident qualifies.

(c) The Department will use the RUG-III nursing CMI scores normalized across all this Commonwealth's nursing facility residents.

(d) The Department will announce, by notice submitted for recommended publication in the *Pennsylvania Bulletin* and suggested codification in the *Pennsylvania Code* as Appendix A, the RUG-III nursing CMI scores and the PA normalized RUG-III index scores.

(e) The PA normalized RUG-III index scores will remain in effect until a subsequent notice is published in the *Pennsylvania Bulletin*.

(f) Resident data for RUG-III classification purposes shall be reported by each nursing facility under § 1187.33 (relating to resident data reporting requirements).

§ 1187.93. CMI calculations.

The Pennsylvania Case-Mix Payment System uses the following three CMI calculations:

(1) An individual resident's CMI shall be assigned to the resident according to the RUG-III classification system.

(2) The facility MA CMI shall be the arithmetic mean of the individual CMIs for residents for whom the Department paid an MA day of care on the picture date. If there are no MA day of care residents in the facility on a picture date, the Statewide average MA CMI shall be substituted for rate determination under § 1187.96(a)(5) (relating to price and rate setting computations).

(i) If a resident is discharged on the first day of the second month of the quarter, that resident's CMI may not be included in the case-mix calculation.

(ii) A hospital reserved bed day may not be counted as an MA day of care. A therapeutic leave day that satisfies the conditions of § 1187.104(2) (relating to limitations on payment for reserved beds) will be counted as an MA day of care.

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(3) The total facility CMI is the arithmetic mean of the individual resident CMIs for all residents, regardless of payor, admitted and present in the nursing facility on the first day of the second month of the first quarter of the calendar year. If a resident is discharged on the first day of the second month of the first quarter of the calendar year, that resident's CMI may not be included in the case-mix calculation.

§ 1187.94. Peer grouping for price setting.

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

(1) Nursing facilities participating in the MA Program, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, will be classified into 12 mutually exclusive groups based on MSA group classification and nursing facility certified bed complement.

(i) The Department will use the most recent MSA group classification, as published by the Federal Office of Management and Budget on or before April 1 of each year, to classify each nursing facility into one of three MSA groups or one non-MSA group.

(ii) The Department will use the bed complement of the nursing facility on the final day of the reporting period of the most recent audited MA-11 used in the NIS database to classify nursing facilities into one of three bed complement groups.

(iii) The Department will classify each nursing facility into one of the following 12 peer groups:

<u>Peer Group #</u>	<u>MSA Group</u>	<u># Beds</u>
1	A	> or = 270
2	A	120 - 269
3	A	3 - 119
4	B	> or = 270
5	B	120 - 269
6	B	3 - 119
7	C	> or = 270
8	C	120 - 269
9	C	3 - 119
10	non-MSA	> or = 270
11	non-MSA	120 - 269
12	non-MSA	3 - 119

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(iv) A peer group with fewer than seven nursing facilities will be collapsed into the adjacent peer group with the same bed size. If the peer group with fewer than seven nursing facilities is a peer group in MSA B or MSA C and there is a choice of two peer groups with which to merge, the peer group with fewer than seven nursing facilities will be collapsed into the peer group with the larger population MSA group.

(2) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a special rehabilitation facility into one peer group, peer group number 13. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of special rehabilitation facilities.

(3) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a hospital-based nursing facility into one peer group, peer group number 14. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of hospital-based nursing facilities.

(4) Once nursing facilities have been classified into peer groups for price setting, the nursing facility costs will remain in that peer group until prices are rebased, unless paragraph (5) applies.

(5) Paragraph (3) sunsets on the date that amendments are effective in Chapter 1163 (relating to inpatient hospital services), to allow for the inclusion of costs previously allocated to hospital-based nursing facilities. Subsequent to the effective date of the amendments to Chapter 1163, the Department will classify hospital-based nursing facilities in accordance with paragraph (1).

§ 1187.95. General principles for rate and price setting.

(a) Prices will be set prospectively on an annual basis during the second quarter of each calendar year and be in effect for the subsequent July 1 through June 30 period.

(1) Peer group prices will be established for resident care costs, other resident related costs and administrative costs.

(2) If a peer group has an even number of nursing facilities, the median peer group price determined will be the arithmetic mean of the costs of the two nursing facilities holding the middle position in the peer group array.

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(3) If a nursing facility changes bed size or MSA group, the nursing facility will be reassigned from the peer group used for price setting to a peer group based on bed certification and MSA group as of April 1, for rate setting.

(4) The Department will announce, by notice submitted for recommended publication in the *Pennsylvania Bulletin* and suggested codification in the *Pennsylvania Code* as Appendix B, the peer group prices for each peer group.

(b) Rates will be set prospectively each quarter of the calendar year and will be in effect for one full quarter. Net operating rates will be based on peer group prices as limited by § 1187.107 (relating to limitations on resident care and other resident related cost centers). The nursing facility per diem rate will be computed as defined in § 1187.96(e) (relating to price and rate setting computations).

(1) Resident care peer group prices will be adjusted for the MA CMI of the nursing facility each quarter and be effective on the first day of the following calendar quarter.

(2) For the period of January 1, 1996, through June 30, 1996, each county owned and operated nursing facility, as defined in § 1187.2 (relating to definitions), receiving a county nursing facility rate as of June 30, 1995, will be provided a transition rate. The transition rate for each county nursing facility for January 1, 1996, through June 30, 1996, will be the higher of the facility case-mix rate for that quarter or a December 31, 1995, facility blended rate.

(i) The blended rate is calculated by multiplying the skilled/heavy care rate on file as of December 31, 1995, by the number of skilled/heavy care days as reported in the county nursing facility's most recently accepted cost report; multiplying the intermediate care rate on file as of December 31, 1995, by the number of intermediate care days reported in the county nursing facility's most recently accepted cost report; summing these products and dividing that sum by the number of skilled care, heavy care and intermediate care days as reported in the county nursing facility's most recently accepted cost report.

(ii) The rate established in subparagraph (i) will be trended forward 3 months from January 1, 1996, to March 31, 1996, by a factor equal to the HCFA Nursing Home Without Capital Market Basket Index as published in the second quarter 1995 issue of the DRI McGraw-Hill publication "Health Care Costs."

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3. For the period July 1, 1996, through June 30, 1997, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or a facility blended rate calculated in accordance with paragraph (2)(i) and (ii), trended forward 9 months from April 1, 1996, to December 31, 1996, by a factor equal to the HCFA Nursing Home Without Capital Market Basket Index as published in the fourth quarter 1995 issue of the DRI McGraw-Hill publication "Health Care Costs."

4. For the period July 1, 1997, through June 30, 1998, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or the facility transition rate identified in paragraph (3), trended forward 12 months from January 1, 1997, to December 31, 1997, by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1996 issue of the DRI McGraw-Hill publication "Health Care Costs."

5. For the period July 1, 1998, through December 31, 1998, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or the facility transition rate identified in paragraph (4), trended forward 9 months from January 1, 1998, to September 30, 1998, by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1997 issue of the DRI McGraw-Hill publication "Health Care Costs."

6. For the period January 1, 1999, through June 30, 1999, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or the facility transition rate identified in paragraph (5), trended forward 6 months from January 1, 1999 to June 30, 1999 by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1998 issue of the DRI McGraw-Hill publication "Health Care Costs."

7. For the period July 1, 1999 through June 30, 2000, transition rates for county nursing facilities will be the higher of the case-mix rate for each respective quarter or the facility transition rate identified in paragraph (6), trended forward 9 months by a factor equal to the HCFA Nursing Home without Capital Market Basket Index as published in the fourth quarter 1998 issue of the DRI McGraw-Hill publication "Health Care Costs."

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